IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.291 OF 1982

Arjun S. Nehere & Ors. ..Appellants

versus

Sopan D. Nehere ..Respondent.

Shri P.S.Dani for the Appellant

Coram : S.R.Sathe, J.
Dated : 7th March, 2006

P.C.

. Heard learned Advocate for the Appellant.

2. Appellants, the original defendants in Regular Civil Suit No.137 of 1987 have preferred this Second Appeal against the Judgment and decree passed by the Court of Additional District Judge, Niphad, whereby the decree for specific performance passed against the defendant was confirmed and appeal was dismissed.

3. It is the plaintiff's case that on 11.5.1984 the defendants agreed to sell the suit land to plaintiff and executed the agreement to sale for consideration of Rs.15,000/-. As the Defendant did

not execute the Sale Deed as per the agreement, the plaintiffs filed suit for specific performance .

4. The defendants opposed the suit and took several contentions. They contended that the real transaction was not of agreement to sale but the document in question was executed only by way of security. The plaintiff had advanced the amount of Rs.6000/- to the defendant No.1 by way of hand loan but got the usanwar chitthi exhibit 32 executed for amount of Rs.12,000/- and subsequently instead of mortgage deed, an Agreement to Sale was got executed on 11.5.1984. The defendants therefore contended that the plaintiff is not entitled for specific performance of Agreement to Sale.

5. After considering the evidence adduced by both the parties, the learned trial Judge came to the conclusion that the transaction was not of mortgage. It is true that earlier, amount was advanced by plaintiff to defendant but ultimately as the defendants could not repay the amount, he decided to sale the land and consideration of Rs.15,000/- was fixed and agreement to sale was executed. The trial court therefore passed decree for specific performance in favour of the plaintiff.

The First Appellate Court confirmed the said decree.

6. Being aggrieved by the same, the defendants filed the present Second Appeal. Shri Dani, learned Advocate for the appellant strenuously argued before me that in the instant case the courts below had accepted the contention of the defendant that the plaintiff had advanced amount to defendant No.1 and Usanwar Chitthi was executed. So, under such circumstances the courts below ought to have held that the transaction was not of Agreement to sale and naturally specific performance should not have been granted. Though the argument is attractive the same cannot be accepted for the simple reason that both the courts below have nowhere stated that the transaction in question was for money lending. All that the Courts below have observed is that initially the plaintiff had advanced money to the defendant No.1 and Usanwat Chitthi exhibit 32 was executed. However, that does not mean that the Agreement to Sale was executed by way of security. On the contrary, it appears that as the Defendant was not having sufficient money to clear the debt, moreover his financial condition was also not good, so under such circumstances he decided to sell the suit property to plaintiff and accordingly executed

the Agreement to Sale. Merely because the defendant had earlier taken money from plaintiff we cannot jump to the conclusion that the transaction between plaintiff and defendant was not of Agreement to Sale. On the contrary if the parties had no intention to execute the Agreement to Sale there was no necessity for them to execute any such agreement because Usanwar Chitthi was already executed for amount of Rs.12,000/-. Besides this, there was no necessity for the defendant to execute possession receipt (Exhibit 34). So, both the courts below have given concurrent finding of fact that the transaction in question was of Agreement to Sale. There is nothing to indicate that the said finding of fact is perverse or that while giving the said finding the court has not taken into consideration any material evidence. Hence, there is no necessity to interfere with the said finding.

7. The learned Advocate for the Appellant submitted that merely because the Agreement to Sale was lawful the Court should not have granted decree for specific performance having regard to the facts and circumstances of the present case. However, it must be noted that the defendants had miserably failed to bring their case under the provisions of

Section 20(2) of the Specific Relief Act. They had not shown any such circumstance as a result of which it was necessary for the court to hold that the plaintiff is trying to gain undue advantage or that the defendants are likely to put in greater hardship. Though feeble attempt was made to show that the consideration was inadequate, there was no sufficient evidence in that behalf. Moreover, sometimes a person in need of money may sell his property even at a price less than the market value. Besides this, merely inadequacy of consideration cannot be held to be sufficient ground to refuse the specific performance. In short, both the courts below rightly considered all the facts and circumstances and correctly exercised the discretion of granting specific performance in favour of plaintiff holding that the plaintiff was and is ready and willing to perform his part of contract.

. Thus, there is absolutely no substantial question of law involved in this matter. Hence the appeal is dismissed.

(S.R.Sathe, J.)